OFFICE SUPREME COURT U.S.
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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1908.

KNOXVILLE WATER COMPANY,
Petitioner,
vs.
MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE.
No. 212.

Petition for a Rehearing and Brief.

CHARLES T. CATES, JR.,
HENRY J. MAY,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States.

KNOXVILLE WATER COMPANY, *Plaintiff in Error,* *vs.* MAYOR AND ALDERMEN OF THE CITY OF KNOXVILLE, *Defendant in Error.*	October Term, 1902. No. 212.

Petition for a Rehearing.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court:

Now comes the plaintiff in error, Knoxville Water Company, and respectfully showing unto this Honorable Court that it is aggrieved by the opinion and judgment of this Court, filed and entered herein, petitions this Honorable Court for a rehearing of this cause, or for a modification of said opinion, for the following reasons:

First.

Because this Honorable Court failed to give any effect to, and wholly disregarded the provisions of, the ordinance-contract of October 20th, 1899, *expressed in the words of the City itself* (and not of the Water Company), as follows, to wit:

"And provided further, that said consolidated Knoxville Water Company, succeeding, as aforesaid, to all the rights, privileges, and franchises of both companies, shall also furnish to the people living in the remaining wards of the City of Knoxville, other than the said Tenth ward, or who may hereafter live in said remaining wards or such wards as may be hereafter added to the City of Knoxville, filtered and wholesome water, or water equal in quality to the filtered water now being furnished by the said Knoxville Water Company at a maximum *rate* not exceeding that fixed by the *contract* between the Knoxville Water Company and the City of Knoxville, dated July 1, 1882, *and the schedule of rates and charges now in force and operation by the Knoxville Water Company.*" (Record, p. 14.)

This was the language of the city expressed by its solemn ordinance as was the case in Detroit against Detroit Citizen's Street Railway Company, 184, U. S. 368.

Second.

Because this Honorable Court limited the rights of petitioner with respect to rates and charges of water to that provision of the contract of July 1st, 1882, as follows: "Said Company will supply private consumers with water at a rate not to exceed five cents per one hundred gallons," and held, in effect, that these are the only words relied upon by the Company; whereas by the ordinance of October 20th, 1899, made part of the contract between the parties by acceptance on the part of petitioner (Record, Pp. 14-15), the city, in effect, agreed that the Company might thereafter charge a maximum rate not in excess of the schedule then in

force and operation by the Company, and which, at that time, October 20th, 1899, was, with respect to meter rates, as follows:

Meter Rates.

0	to 50 M gals.	monthly,	25 c.	per M	gallons.
50	to 100 M "	"	20 c.	"	"
100	to 150 M "	"	15 c.	"	"
150	to 200 M "	"	12 c.	"	"
200	to 250 M "	"	10 c.	"	"
250	to 350 M "	"	9 c.	"	"
350	to 1,000,000 gals.	"	8 c.	"	"
Above 1,000,000 "		"	7 c.	"	"

Record p. 91.

The necessary effect of this ordinance of October 20th, 1899, was to make a new schedule of rates, the maximum of which was just fifty per cent. of the price named in the agreement of July 1st, 1882, and this provision with respect to the rates contained in said ordinance was most material to the city, *framed in its own language*, and made a consideration for the consent of the city to the consolidation of the Lonsdale-Beaumont Company and the Knoxville Water Company.

Third.

Because this Honorable Court held, in effect, that there was no contract between the city, and the Company; whereas not only is this agreement of July 1st, 1882 (Record Pp. 8 to 12), in form and substance a contract binding both parties with respect to the matters therein stated, but the ordinance of October 20th, 1899, framed in the words of the city itself, is also an agreement and contract with respect to rates.

Fourth.

Because this Honorable Court held that (quoting from the opinion) "the trouble at the bottom of the Company's case is that the supposed contract on which it is founded does not exist;" whereas the record shows conclusively the existence of a contract between the parties, that is, the agreement of July 1st, 1882, modified and amended by the ordinance-contract of October 20th, 1899. (Record Pp. 5 to 12; 13 to 15.)

This agreement of July 1st, 1882, has always been treated by the city, as well as the Company, as a contract, and as such, it was amended by mutual agreement on February 9th, 1888 (Record page 47), and again (Record Pp. 13, 14, 15), by the ordinance-contract of October 20th, 1899, and it was referred to by the Supreme Court of Tennessee in it opinion (Record Pp. 209, 219, 220) as an agreement and contract; therefore, it is respectfully submitted that this Court was in error in holding that a contract did not exist; and if, in that part of the opinion above quoted, it was intended to hold only that there was *no contract with respect to rates,* the opinion should be modified so that the limits of the Court's holding may be clearly defined; otherwise it must be apparent to the Honorable Court that petitioner will suffer irreparable injury with respect to the other vital matters involved in said contracts over which the city was not given, and it is not even claimed that it was given, any power of regulation whatsoever.

Therefore your petitioner prays:

1st. That an order may be made for a rehearing of the argument in this cause on a day to be appointed by the Court, at such time and upon such points as the Court may direct.

2d. If in the opinion of the Court your petitioner is not entitled to a rehearing of the argument on the merits, as prayed above, then it prays for a rehearing to the extent that the part of the opinion quoted in the fourth paragraph of this petition be so modified as to limit the holding "that the supposed contract * * * does not exist" to the question of rates, and to show that the remaining parts of the contracts existing between petitioner and defendant in error are not intended to be, and are not, affected by said opinion so quoted.

And so petitioner will ever pray.

KNOXVILLE WATER COMPANY.

By HEBER J. MAY, and
CHARLES T. CATES, JR.,
Its Attorneys.

We hereby certify that this petition for a rehearing is presented in good faith, and that we believe it is based on meritorious grounds.

HEBER J. MAY,
CHARLES T. CATES, JR.,
Attorneys for Petitioner.

Brief.

This petition for a rehearing is presented in the utmost good faith upon the ground that the broad language in the opinion will be destructive of the rights and interests of the Knoxville Water Company, if it shall be allowed to stand in its present form. In order to make plain our contention, we quote from the opinion as follows:

> "The trouble at the bottom of the Company's case is that the supposed contract on which it is founded does not exist. If such a contract had been intended it was far too important to be left to implication. In form the words are the words of the Company alone. They occur in the part of the contract which sets forth the Company's undertakings, not in the part devoted to the promises of the city or in that which contains the still later mutual agreements," etc.

The above language will be construed to mean that no contract whatever has ever existed, nor now exists, between the Knoxville Water Company and the City of Knoxville, thereby giving to the controversy between the parties a new status, and one that has not been claimed by the city or contended for by it in the courts or elsewhere.

Is it a fact that the contract upon which the Company's case is founded does not exist? It is, according to its own terms, a memorandum of agreement made and entered into by and between the Knoxville Water Company, of said city, in the State of Tennessee, party of the first part, and the Board of Mayor and Alderman of the

City of Knoxville, Tennessee, party of the second part. The Company, in order to supply said city with water for fire protection and public sanitary and domestic purposes, "does hereby agree" to perform the various and important matters set forth in its part of the agreement (Rec. Pp. 5-8); and the city "in consideration of the premises on its part covenants and agrees" to perform the important matters and things set forth by it in paragraphs 1st to 5th (Rec. 8-10). The paragraphs above referred to constitute the agreement or contract between the parties, and contain the considerations and covenants from the one party to the other, upon which the same is founded. Afterwards some mutual understandings were added to the contract by way of addition or amendment, as contained in paragraphs 1st to 4th of subdivision III (Rec. 10-11), all of the provisions of which are intended simply to modify or limit the provisions of the contract as previously agreed upon and for the benefit of the city, paragraph 4th expressly stating that it is an amendment to article one of section one of the agreement. If these paragraphs have for their object the especial interests of the city, it is fair to presume they are formulated in the language of said city, and as they modify or amend the part of the contract which sets forth the Company's undertakings and practically embody or incorporate such part of the contract into the mutual agreements and obligations of the parties, it is a fair interpretation of the contract to say, in view of these facts, and in connection with the considerations and covenants of the city, that any cer-

tain words of the contract are the words of either of the parties alone. The words of the contract on behalf of the Company are substantially the words and requirements of its charter, and also of the statute authorizing the granting of the charter to the Company. (Rec. p. 51. Appendix No. 1 to brief.) The parties themselves have recognized the existence and effectiveness of the contract at all times and under all circumstances, the only controverted question between them being as to whether the fixing of the rate or price of water by said contract of July 1, 1882, and the ordinance of October 20, 1899, exhausted the power of the city to regulate such price, or whether the power of the city to further regulate such price without the consent of the Company existed under the law, notwithstanding the provisions of the contract. In other words, did the contract or the statute prevail in the matter of regulating the water rates? This was the only question between the parties to the suit. The only material change that was ever made in the water rate from that contained in the contract of July 1, 1882, at the instance of the city, was by the ordinance of October 20, 1899, and that was done with the consent of the Company. The contract of July 1, 1882, was at the same time by consent of the parties extended over new territory acquired or to be acquired by the city, thereby reafirming all of the agreements contained in said contract and solemnly acknowledging its existence.

We have here then a contract which has been treated as binding between the parties themselves, and which has been executed, or is in process of execution, by said parties,

as the case may be, from the date of its execution up to the present time, the only changes therein having been made by consent of such parties by the ordinance of October 20, 1899, unless the settlement of disputes as to hydrant rentals shall be regarded as an alteration, or amendment.

On February 9, 1888, the differences between the Company and the city concerning hydrant rentals, in regard to the contract of July 1, 1882, were settled, and the existence of the contract recognized by amendment. (Rec. 47–48).

On October 20, 1899, the existence of the contract of July 1, 1882, was recognized, and by section six of the ordinance, it is provided that, upon the acceptance, in writing, by the Knoxville Water Company of such ordinance (there was such acceptance) that, "in so far as it alters or changes said contract of September 17, 1892, and of July 1, 1882, signed by the president and secretary of said companies, in the office of the recorder of the City of Knoxville; and thereupon this ordinance shall be and become a part of each of said contracts, as fully as if the provisions of this ordinance were embraced in formal written contract, made and executed between the City of Knoxville and the said Lonsdale-Beaumont Water Company and the said Knoxville Water Company." (Rec. 13–16.)

The Supreme Court of Tennessee has, in its opinion, recognized the existence of the contract between the city and the company, in the following language:

"The water company has a valuable plant at Knoxville, which it has erected and operated under contracts and ordinances made by the City of Knoxville, and it has valuable franchises in the furnish- of water to the city and people."

* * * * *

"The defendant company continued to charge the rates provided in a contract and previous ordinance of October 20, 1899," etc." (Rec. 209.)

* * * * *

"On the first of July, 1882, an agreement was entered into between the city and the water company in regard to the erection by the latter of waterworks, and the supplying for a period of thirty years, the city and its inhabitants with water," etc.

* * * * *

The contract provides, etc., etc, (Rec. 219),

* * * * *

On October 20, 1899, the city passed an ordinance authorizing the Knoxville Water Company to "supply to the inhabitants of the balance of the City of Knoxville" (excepting North and West Knoxville), "water at a maximum rate, not exceeding that fixed by the contract of July 1, 1882, and the schedule of rates and charges now in force and operation by the Knoxville Water Company." (Rec. 220.)

The Tennessee Legislature passed an act, which was approved February 2, 1903, in which the contract of July 1, 1882, and the ordinance of October 20, 1899, are so completely recognized as existing contracts between the city and the company, that we have printed the act as a part of our argument and marked it Exhibit No. 1.

The Knoxville Water Company and the City of Knoxville were competent parties to enter into the contracts of July 1, 1882, and October 20, 1899, the former under the Act of April 9, 1885, c. 115 (Appendix No. 2 to brief) and its charter (Rec. 51) granted as provided for in the Act of March 27, 1877, c. 104, and by leave of said city (Appendix No. 1 to brief), and the latter under the authority conferred upon it by the Act of April 9, 1885, c. 115, (Appendix No. 2 to brief) which is amendatory of an Act of March 23, 1875, c. 142.

Mr. Justice Shiras said in Vicksburg Water-works Co. *vs.* Vicksburg, 185 U. S. 65, 80, as follows:

> "It can not be seriously contended that under the Act of March 18, 1886, authorizing the city to provide for the erection and maintenance of a system of water-works, and to contract with a party or parties to build and operate water-works, and under the ordinance of the city of November 18, 1896, providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; the terms were explicitly set forth in the ordinance; the works erected were approved by the city, and the respective obligations created by the contract were duly complied with without question or complaint, for a period of fourteen years."

The city of Knoxville acquiesced in the contracts of July 1, 1882, and October 20, 1899, for about eighteen years and nine months, subject to such alterations therein as were made by mutual consent.

And it is hereby submitted that, since the opinion in this case has been handed down, legislation has been procured in the General Assembly of Tennessee, by which the city of Knoxville is authorized to own and operate a system of water-works, the provisions of the act effectively evading all of the obligations and agreements of the parties, mutual and otherwise, contained in the contract of July 1, 1882, and as re-enacted by mutual agreement in the ordinance of October 20, 1899, in regard to the purchase by said city from said company of the water-works at a price to be agreed upon or to be fixed by disinterested appraisers. The act was passed March 31, 1903, and approved April 3, 1903, and is marked Exhibit No. 2 as a part of this argument.

We submit, with confidence, that a contract does exist between the city of Knoxville and the Knoxville Water Company, whether it may or may not be subject to the right of the city to regulate the price or rates of water to its inhabitants or private consumers.

Respectfully submitted,

CHARLES T. CATES, JR.
HEBER J. MAY,
Attorneys for Petitioner.

Exhibit No. 1.

CHAPTER 12.

House Bill No. 28.

AN ACT to authorize the city of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Company, build extensions thereto and maintain and operate the same.

Whereas, Under and by virtue of a certain contract dated July 1, 1882, executed by the authorities of the city of Knoxville (a municipal corporation) and the Knoxville Water Company (a corporation organized under Chapter 103 of the Acts of 1877) and an ordinance of said city passed October 20, 1899, and accepted by said Knoxville Water Company on the same day, said city of Knoxville has an option and the right to purchase all the property now owned or hereafter acquired up to the date of the purchase of said Knoxville Water Company, at a valuation to be fixed by an appraisement, if not agreed to, as provided in said contract of July 1, 1882, and carried forward and extended in the ordinance of October 20, 1899; and,

Whereas, The city of Knoxville desires to take up said option and purchase the plant and property of said Knoxville Water Company to the end that the same may be owned, operated and maintained by said city for the benefit of the people thereof.

Now, therefore, in order that said city may be enabled to purchase and acquire the plant and property of said Knoxville Water Company and build additions thereto that may be deemed necessary.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the city of Knoxville, the corporate name of which is the Mayor and Aldermen of the city of Knoxville, be and hereby is, authorized to make the purchase of the plant and property of said Knoxville Water Company, and to make necessary extensions thereto, and for that purpose the said city of Knoxville is hereby authorized to issue bonds in such amount, number and denomination, and to run such

length of time as may be determined by the Mayor and Aldermen of said city, at a rate of interest not exceeding 4 per cent., payable semi-annually, for such time as said Mayor and Aldrmen of said city may determine, to enable it to acquire the plant and property of the Knoxville Water Company in accordance with the terms and provisions of the aforesaid contract of July 1, 1882, and the aforesaid ordinance contract of October 20, 1899.

Sec. 2. That authority is hereby conferred upon said corporate authorities of the city of Knoxville to issue such an amount of bonds as may be necessary to purchase and acquire the said plant and property of the said Knoxville Water Company upon the agreed valuation between the contracting parties, or in default of same, upon a valuation to be ascertained and fixed by appraisers in accordance with the provisions of the aforesaid contract of July 1, 1882, and the ordinance of October 20, 1899, between said city and said Water Company.

Sec. 3. That in addition to the bonds necessary to enable said city to acquire the plant and property of said Water Company, said city is hereby authorized to issue additional bonds in an amount not exceeding 10 per cent. of the amount of bonds necessary to purchase said plant and property of said Water Company to be used in making additions to said plant, including acquisition of such real estate or other property necessary in making such additions.

Sec. 4. The bonds shall be payble in gold coin of the United States, of standard weight and fineness, provided, however, that the city may either issue its own bonds in exchange for outstanding bonds of the Knoxville Water Company as part of the purchase price of said plant and property, or the said city may assume, as part of the purchase price, the bonded indebtedness now upon the plant and property of the Knoxville Water Company, or any part thereof, in lieu of the issuance and sale of a proportionate amount of its own bonds under the power herein granted.

Sec. 5. Before notice shall be given or an appraisal had in pursuance to the contract of July 1, 1882, and the ordinance of October 20, 1899, or issuance of bonds, an election shall first be called throughout the city of

Knoxville under the general laws governing municipal elections in Knox County, and if two-thirds of the qualified voters of said city voting in said election shall vote in favor of the purchase of the property and plant of the Knoxville Water Company and the issuance of the bonds for the purposes of this Act, or exercise of other powers herein given, then the Mayor and Aldermen of the city of Knoxville shall forthwith give notice of the acceptance by the city of the option to purchase said plant, whereupon, unless the valuation of said plant is agreed upon by the contracting parties, an appraisal shall be had of all the property of the Knoxville Water Company, as provided for in the contract of July 1, 1882, and in the ordinance of October 20, 1899, after which bonds sufficient shall be issued as may be necessary under this Act for the purchase of said property and plant. The said bonds to be under the management and control of the Commissioners to be hereinafter appointed, and to be sold, if sale is necessary, at not less than par; provided, however, that the city may exercise the power herein given to assume the bonds of the Knoxville Water Company to be credited at par upon the appraisal value of said property

Sec. 6. That the Commissioners of Election shall furnish according to the laws now existing and regulating elections in this State, tickets to be used in said election and upon such tickets shall be printed, first, "Bonds;" second, immediately below, "No Bonds," and persons voting for the issuance of bonds and for the purchase of the property and plant of the Knoxville Water Company and for the extension of same and the other provisions of this Act, shall mark their tickets with a cross opposite the word Bonds, and those voting against the same shall in like manner mark their tickets opposite the words No Bonds.

Sec. 7. That the Mayor and Aldermen of the city of Knoxville shall have the power of eminent domain to take and appropriate in making extensions to said plant the grounds and other real property in the same manner as are now provided for condemnation in laying out streets, etc., in sub-Section 30 of Section 18 of the charter of the city of Knoxville.

Sec. 8. That for the purpose of controlling, managing and operating said water plant and for the disposal of the bonds or money realized therefrom, as provided in this Act in the event of a favorable election for the issuance of bonds, as hereinbefore provided, there is created a Water-works Commission for said city, which shall be composed of three members, all to be reputable citizens and tax-payers of the city without any other official connection with the city, and without any connection whatever with the Water Company. Said Commissioners shall be elected by the City Council at its next regular session after it has been determined that the city has voted in favor of the issuance of bonds for the purchase of said plant, etc., by the majority herein designated.

The said Commissioners so elected shall hold for a period of one, two and three years respectively from the date of their election and qualification, and until their successors are elected and qualified.

The Mayor and Aldermen of the city of Knoxville shall have the power to fill all vacancies in said Water-works Commission at any regular session of said Board after which vacancy occurs.

Said Commissioners shall take an oath of office to faithfully perform their duties before the City Recorder, who shall file in his office said oaths and preserve the same, and they shall likewise give bond in such sums as the Mayor and Aldermen of the city of Knoxville may prescribe, conditioned for the faithful discharge of their duties, which bond shall likewise be filed and preserved in the office of the Recorder of said city.

Said Commissioners are forbidden to have or take any interest, direct or indirect, in any contract or transactions relative to the purchase, extension or operation of said plant.

The compensation to be paid said Commissioners shall be determined by the Mayor and Aldermen of the city of Knoxville in such sum as said authorities may deem adequate, the same to be fixed before said Commissioners are elected. Said Commissioners will elect a Chairman and Secretary, and also such clerks as may be necessary for the work to be done, and also a Treasurer of the Commission, whose salary shall be fixed by the Mayor and Aldermen of the city of Knoxville.

The said Commission shall require of such clerks and Treasurer an adequate bond for the faithful discharge of their duties, which bond shall be approved by the Board of Mayor and Aldermen, and shall be filed and preserved in the Recorder's Office of said city.

The powers and duties of said Commissioners shall be full and ample to make all contracts for the extension of said plant or the operation and maintenance of the same, but all contracts involving an expenditure of more than five thousand ($5,000) dollars, shall be reported to the City Council, and approved by it before the same shall be final. The said Commissioners shall also have the power, subject to the foregoing limitations, of making all needed repairs deemed by them necessary to the proper operation and maintenance of said plant. Upon due notice any Commissioner guilty of misconduct or misfeasance in office shall be removed by the Mayor and Alderman of the city of Knoxville.

Sec. 9. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 29, 1903.

L. D. TYSON,
Speaker of the House of Representatives.

ED. T. SEAY,
Speaker of the Senate.

Approved February 2, 1903.

JAMES B. FRAZIER,
Governor.

STATE OF TENNESSEE—OFFICE OF SECRETARY OF STATE.

The foregoing is a full, true and correct copy of House Bill No. 28, Acts of the General Assembly, State of Tennessee, 1903, to authorize the city of Knoxville to issue bonds to purchase or acquire plant of the Knoxville Water Co.

Witness my hand and the Great Seal of the State of Tennessee, April 8th, 1903.

[SEAL.]

JNO. W. MORTON,
Sec'y of State.

Exhibit No. 2.

CHAPTER 153.

Senate Bill No. 257.

AN ACT to authorize the City of Knoxville to own and operate a system of water-works, and to issue bonds for that purpose, and to amend House Bill No. 28, being an Act entitled "An act to authorize the City of Knoxville to issue bonds to purchase and acquire the plant and property of the Knoxville Water Company, build extensions thereto, and maintain and operate the same." Passed January 29, 1903, and approved February 2, 1903, so as to read as follows:

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That it shall be lawful for the Mayor and Aldermen of the City of Knoxville to acquire, own and operate a system of water-works for said city and adjacent territory, either by purchase or construction, and for that purpose it is authorized to issue its interest-bearing coupon bonds to an amount not exceeding $750,000 in the manner and under the restrictions hereinafter provided.

Sec. 2. Be it further enacted, That said bonds shall be issued under rules, regulations, and restrictions to be provided by ordinance, by the Mayor and Aldermen of said city, which bonds shall be in the denomination of $1,000 each, and shall bear a rate of interest to be fixed by said ordinance, not exceeding four per cent. per annum, and shall run for a period of not longer than forty years, the interest on the same to be payable semi-annually on the first of January and July, respectively, said interest and principal to be paid in gold coin of the present standard and fineness, and which said bonds shall be provided with coupons for each semi-annual interest payment, and said bonds shall be known as the "Water-works bonds" of the City of Knoxville, and shall not be sold for less than par. No commission whatever shall be allowed for the sale of said bonds.

Sec. 3. Be it further enacted, That the proceeds of said bonds shall be paid into the city treasury and be there kept and preserved as a separate fund, to be used exclusively in the purchase or construction of a system

of water-works for said city and adjacent territory, and in making such alterations, extensions, additions and improvements as may be necessary, and in maintaining the same. Said bonds, and all coupons attached to said bonds, shall at maturity be, and remain until fully paid, a lien on said water-works property, appurtenances, rights, franchises and privileges, acquired by the corporate authorities of said municipality. Said lien shall include and extend to all improvements, extensions and additions which the corporate authorities of said municipality may make, and shall be in addition to the corporate liability for the payment of said bonds. Said bonds and coupons attached thereto shall be exempt from municipal taxation.

Sec. 4. Be it further enacted, That there is hereby created for said city of Knoxville a water-works commission, to be composed of five citizens and freeholders of said city, who shall be elected by the City Council of said city, as herein provided. One member shall be elected for one year, one for two years, one for three years, one for four years, and a fifth for five years, who shall hold their office for the time for which they shall be elected and until their successors shall be elected and qualified; which successors shall each be elected at the conclusion of the several terms aforesaid for the term of five years thereafter; Provided, that election to fill vacancies in said commission shall only be for the unexpired term in which the vacancy occurs. Said commissioners shall not be related to the Mayor or any member of the City Council, or any department official of said city within the fourth degree, either by affinity or consanguinity. The first Board of Commissioners shall be elected not earlier than sixty days after the passage of this act, which election and all subsequent elections, including elections to fill vacancies, shall be upon thirty days' public notice and at a regular meeting of said City Council.

Sec. 5. Be it further enacted, That before entering upon their duties said commissioners shall each file with the City Recorder a bond with solvent surities in the penalty of one thousand dollars, payable to the State of Tennessee, for the use of the City of Knoxville, condi-

tioned that said commissioner shall honestly and faithfully perform all the duties devolving upon him as such commissioner, which bond shall be approved by the Mayor and alderman of said city, and said commissioner shall, before entering upon their duties, take and subscribe to the following oath.

"I, ———, do solemnly swear that, as a member of the water-works commission of the City of Knoxville, I will honestly and faithfully perform all the duties devolving upon me as such commissioner, and that I am not related to any of the parties forbidden by law within the prohibited degree, and that I am not, and will not become during my term of office, interested in any contracts relating to the construction or operation of said water-works, as prohibited by law. So help me God."

Sec. 6. Be it further enacted, That said commissioners are hereby prohibited from having any interest, direct or indirect, in any contract in anywise relating to the construction, purchase and operation of said water-works, and are also prohibited from awarding contracts for the construction or operation, or for any materials for use in the construction, extension and operation of said water plant to any person or persons related to any of the members of said commission within the fourth degree, either by affinity or consanguinity, or to any member of the City Council, or to any department official, of said city, or in which any such person, member or department official, or any assistant, clerk or deputy under them, has any direct or indirect interest.

Sec. 7. Be it further enacted, That the entire work of supervision of the purchase or construction and operation and maintenance of said system of water-works shall be vested in said Board of Commissioners as above provided within the the limitations hereinafter provided.

Sec. 8. Be it further enacted, That said commissioners are authorized and directed to obtain from the Knoxville Water Company a written proposition for the sale of its plant, franchises, etc., to the city of Knoxville, giving the price and terms of payment, together with the opinion of competent, disinterested experts as to the cost and present value of said plant; said commission is also authorized and empowered to secure plans, speci-

fications and estimates of the cost of the construction of a new system of water-works, and to report all matters called for in this section to said City Council for its consideration, and to accompany said report with its recommendations in the premises, which recommendations shall be accompanied with all facts, testimony and opinions upon which the same are based. Provided, that said commission shall not close any contract for the purchase or construction of water-works until it has been duly authorized to do so by said City Council, after the proposition shall have been ratified by a vote of the people as herein provided; and provided, further, said commission shall not incur any expense in any of said matters until authorized to do so by said City Council, and until there has been appropriated out of the city treasury and placed to the credit, and at the disposal of said commission, a sufficient amount of money to cover such expense.

Sec. 9. Be it further enacted, That said commission shall organize by electing one of their number as chairman, and by electing a secretary and treasurer, who need not be a member of said Board of Commissioners, but who, before entering upon his duties, shall execute bond in a penalty to be fixed by the Board of Mayor and Aldermen, and with good and sufficient surities to be likewise approved by said board. Said water-works commissioners shall have regular meetings, and may have special meetings under rules and regulations adopted by themselves. They shall keep a true and faithful record of all their actions and proceedings, and of the water-works plants purchased or constructed by them, and of all extensions, alterations, and improvements made by them. A copy of said record on any subject, certified by said chairman and secretary, shall be evidence in the courts of this State. They shall be authorized to make contracts, employ clerks, engineers, firemen, superintendents' inspectors, water-meter readers, plumbers, laborers, and other persons, and purchase materials such as may be necessary in the construction or operation of said water-works plant. They shall fix the compensation of all employees, except that of the secretary and treasurer, whose salary or compensation shall be fixed by the

Board of Mayor and Aldermen. Said secretary and treasurer, when elected, shall not be related to any member of said water-works commission, or to any department official of said city within the fourth degree. They are authorized to make and enforce reasonable rules and regulations and to fix water rates, tolls, or the price for the use of water, and they may for said purpose, enter upon premises where water is used or desired for purposes of inspection, repairs, or other work in introducing or regulating the use of water. They shall have full power to collect and enforce collections of all moneys due for the use of water or arising out of the operation of said plant. They shall also have power to grant the use of water free of charge to persons who are objects of charity, and to charitable institutions. But the rules and regulations and water rates made by said commissioners shall be subject to ratification by ordinance by the Board of Mayor and Aldermen.

Sec. 10. Be it further enacted, That no contract made by said water-works commissioners in the construction, alteration or extension of said water-works, involving more than one thousand dollars, shall be binding upon the city, until submitted to the Board of Mayor and Aldermen and approved by them.

Sec. 11. Be it further enacted, That said water-works commissioners shall submit to the Board of Mayor and Aldermen at their last regular meeting in January of each year, a full detailed report of the work, income and expenditures for the preceding year, showing sources of income, items of expense, names of all salaried employees, improvements, extensions, and alterations made and such other matters as they may deem material, and as the Board of Mayor and Aldermen may call for. And their report and books shall be subject to examination and correction by the Board of Mayor and Aldermen. Said report shall also contain an estimate of the costs, expenses, improvements, extensions, and alterations necessary for the succeeding year.

Sec. 12. Be it further enacted, That the Board of Mayor and Aldermen of the City of Knoxville shall have, and are hereby given and granted, power and authority to determine by ordinance whether or not the

members of the water-works commission shall be compensated for services rendered, or shall render same without compensation; and if compensation is determined to be allowed them, then the amount of such compensation, and manner and time of its payment, shall be fixed by ordinance.

Sec. 13. Be it further enacted, That in the event it shall be determined to purchase or construct, equip and maintain a system of water-works by the city, then, for the purpose of securing sites for pumping stations and other necessary purposes, including the laying of mains and water pipes, and sites for reservoirs and filtering galleries, extensions, improvements, and alterations, the city shall have and is given the right of condemnation of grounds within and without its corporate limits, as already given in sub-section 30 of Section 18 of its charter, as well as by proper proceeding in the Circuit Court for Knox County, as provided by law.

Sec. 14. Be it further enacted, That any member of said Board of Water-works Commissioners shall be subject to removal by the Board of Mayor and Aldermen for incompetency or official misconduct, upon specific charges in writing, and after due notice to the members against whom charges are made, and after trial, or opportunity of trial, before the Board of Mayor and Aldermen. But two-thirds of said Board of Mayor and Aldermen shall vote for said removal before the same can be made.

Sec. 15. Be it further enacted, That after said Commissioners shall have made their report to the City Council, as provided in Section 8 of this act, said City Council shall call an election to be held in the said City of Knoxville, by the regularly constituted authorities, after thirty (30) days' advertisement in two city papers, at which all persons legally qualified to vote for Mayor and Aldermen of said city may vote, for the purpose of ascertaining the will of the people upon the following questions:

First: Whether or not the city shall be authorized to issue bonds, as provided in Section 1 of this act, and

Second: To determine whether the city shall purchase the plant of the Knoxville Water Company, or construct

a new water system. The election commissioners shall cause to be prepared ballots to be used and voted at said election, on which there will be printed the following:

"Vote for one."
"For Water-works Bonds."
"Against Water-works Bonds."
"Vote for one."
"For Construction of Water-works."
"For Purchase of Water-works."

At said election those who favor the issuance of bonds shall place a cross (X) mark opposite the words "For Water-works Bonds," and those who oppose the issuance of bonds shall place a cross (X) mark opposite the words "Against Water-works Bonds," and those who favor the construction of water-works shall place a cross (X) mark opposite the words "For Construction of Water-works," and those favoring the purchase of the Knoxville Water Company's plant shall place a cross (X) mark opposite the words "For Purchase of Water-works."

Provided, that if said Water-works Commissioners are unable to obtain from the Knoxville Water Company a written proposition for the sale of its plant, franchise, etc., to the City of Knoxville, giving the price and terms of payment, "For Water-works Bonds," Against "Water-works Bonds," shall be issued for the construction of water-works and the tickets shall contain only the words "Vote for One," "For Water-works Bonds," "Against Water-works Bonds," and those who favor the the construction of water-works by the city shall place a cross (X) mark opposite the words "For Water-works Bonds," and those who oppose the construction of water-works by the city, place a cross (X) opposite the words "Against Water-works Bonds." Said election shall be held under existing laws and the returns shall be duly certified to the Board of Mayor and Aldermen of said city; provided, there shall also be returned to said Board of Mayor and Aldermen all the ballots voted at said election, together with one set of poll books and one set of tally sheets. The remaing poll books and tally sheets shall be filed in the office of said commissioner of election, there to be held subject to the inspection of any

citizen of said city. Provided, that the election authorized by this act may be called and held by the election commissioners of the county under the general election laws and held at any time within two years after the passage of this act.

Provided further, that after one election has been heldunder this act, one or more subsequent elections may be held under this act, but no such election shall be held until the expiration of at least twenty-four months after a previous election.

Sec. 16. Be it further enacted, That it shall be the duty of said City Council, when it shall be convinced that two-thirds of all those voting on the question of the issuance of bonds have voted in favor thereof, to declare the result by ordinance, and in that event and no other, to cause said bonds to be issued as provided herein, and cause the same to be converted into cash under such rules and restrictions as it shall deem necessary to provide by ordinance. Provided, that said bonds shall not be issued until after a contract for the construction or purchase of said water-works shall have been lawfully made and concluded.

Sec. 17. Be it further enacted, That said City Council shall also canvass and by ordinance declare the result of said election on the question of purchase or construction of a system of water-works, and shall cause to be carried into effect the will of the people as expressed at said election. Provided, that if the said Knoxville Water Company submit a written proposition as shown in Section 8 of this act, a majority of those voting on said proposition for purchase or for construction in favor of either proposition, shall be sufficient and shall decide the question.

Sec. 18. Be it further enacted, That the net annual income and revenue derived from the operation of the water-works system, after payment of operating expenses, extensions and improvements, or as much thereof as shall be necessary for that purpose, shall be set apart and applied, first, to the payments of the interest coupons of the said water-works bonds as such interest coupons shall mature.

Sec. 19. Be it further enacted, That all laws and parts of laws in conflict with this act are hereby repealed, and that this act take effect from and after its passage, the public welfare requiring it.

Passed March 31, 1903.

ED. T. SEAY,
Speaker of the Senate.

L. D. TYSON,
Speaker of the House of Representatives.

Approved April 3, 1903.

JAMES B. FRAZIER,
Governor.

STATE OF TENNESSEE,
OFFICE OF SECRETARY OF STATE.

It is hereby certified that the foregoing is a true and correct copy of Senate Bill No. 257, to authorize the city of Knoxville to own and operate a system of waterworks, passed by the General Assembly, 1903, State of Tennessee.

Witness my hand and Seal of Office, at Nashville, Tennessee, this April 10, 1903.

[SEAL.]

JOH W. MORTON,
Secretary of State.